

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JUSTIN LYNN VICTORY,  
 Plaintiff(s),  
 v.  
 HENDERSON NA P.D., et al.,  
 Defendant(s).

Case No. 2:23-cv-02086-CDS-NJK

**ORDER  
 AND  
 REPORT AND RECOMMENDATION**

[Docket Nos. 43, 46, 47, 48, 49]

On April 24, 2024, the Court screened Plaintiff's complaint, finding that a claim had been stated against the John Doe Henderson police officers. Docket No. 17.<sup>1</sup> The Court required Plaintiff to identify these police officers by July 23, 2024. *See id.* at 3. The Court warned therein that "**if failure to comply with this deadline may result in dismissal of this claim.**" *Id.* at 1 (emphasis in original).

On July 12, 2024, Plaintiff filed a motion to extend the time to identify the John Doe Henderson police officers. Docket No. 32. Plaintiff explained therein that he was attempting to obtain documentation from his attorney (Kenneth Frizzell) to identify the John Doe Henderson police officers, but that he had not yet received that documentation. *Id.* at 1-2. On July 12, 2024, the Court granted that motion to extend, resetting the deadline for Plaintiff to identify the John Doe Henderson police officers for September 6, 2024. Docket No. 33. The Court again warned therein that "**if failure to comply with this deadline may result in dismissal of this claim.**" *Id.* at 1 (emphasis in original).

Plaintiff did not comply with that deadline. Instead, he has filed a motion to extend the deadline that was again predicated on assertions that Plaintiff was attempting to obtain relevant documentation from Attorney Frizzell. Docket No. 39. On August 28, 2029, the Court noted the

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<sup>1</sup> This case has at various times included other defendants, but all other defendants have at this point been dismissed.

1 ample time already provided to identify the John Doe Henderson police officers and the thin  
2 showing made for another extension, but allowed a “final extension to this deadline” and extended  
3 it to October 7, 2024. Docket No. 40 at 1. The Court warned that “**NO FURTHER**  
4 **EXTENSIONS WILL BE GRANTED, SO FAILURE TO COMPLY WITH THIS**  
5 **DEADLINE MAY RESULT IN DISMISSAL OF THE SUBJECT CLAIMS.”** *Id.* (emphasis  
6 in original). Plaintiff did not comply with that deadline.

7 Although disfavored, the Ninth Circuit has permitted pleading of claims against unknown  
8 defendants in some circumstances. *See, e.g., Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th  
9 Cir. 1999). In such a scenario, however, the Plaintiff must undertake efforts to identify the  
10 unknown defendants. *See, e.g., id.* Courts are well within their discretion to set a deadline by  
11 which the plaintiff must identify unknown defendants and courts routinely reject efforts to  
12 maintain claims against unknown defendants when their true identifies have not been identified  
13 within a reasonable time. *See Rich v. Wexford Health Sols.*, 2011 WL 53064, at \*3 (D. Ariz. Jan.  
14 7, 2011) (providing *pro se* prisoner with 60 days to discover actual names of doe defendants and  
15 explaining that failing to comply with that deadline will result in dismissal); *see also ME2 Prods.*  
16 *v. Doe*, 2017 U.S. Dist. Lexis 63920, at \*2-3 (D. Nev. Apr. 27, 2017) (collecting cases).

17 As noted above, the already-extended deadline to identify the John Doe Henderson police  
18 officers has expired. Plaintiff instead filed various motions regarding a desire to extend this  
19 deadline further and to obtain discovery and subpoenas. Docket Nos. 43, 46, 47, 48, 49. The  
20 problem with these motions is that they fail to explain why Plaintiff is likely to obtain information  
21 from his attorney at this juncture given his lack of success previously, they fail to explain how  
22 service is feasible of any subpoena given Plaintiff’s incarcerated status, *see* Fed. R. Civ. P.  
23 45(b)(1), they do not attach a proposed subpoena, and/or they do not explain how the subpoena  
24 sought is likely to lead to the identification of the John Doe Henderson police officers.<sup>2</sup> The Court  
25

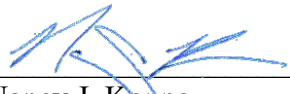
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26 <sup>2</sup> For example, Plaintiff seeks to subpoena phone records. Docket Nos. 46, 48. The phone  
27 records are apparently sought not to actually identify the John Doe Henderson police officers, but  
28 rather to support Plaintiff’s contention that his attorney has not been providing him requested  
documentation. *See* Docket No. 46. The motions do not attach proposed subpoenas or identify  
the proposed recipients of such subpoenas.

1 has been given no reason to believe that allowing the relief sought will result in the actual  
2 identification of the John Doe Henderson police officers. In addition, Plaintiff has already had six  
3 months to identify the John Doe Henderson police officers, has already been warned repeatedly  
4 that failing to do so may result in dismissal, and has been told that further extensions would not be  
5 granted.

6 Accordingly, the Court **DENIES** the pending motions to extend, for discovery, and for  
7 subpoenas. Docket Nos. 43, 46, 47, 48, 49. The undersigned **RECOMMENDS** that the claims  
8 against the John Doe Henderson police officers be **DISMISSED** without prejudice and that this  
9 case be closed.

10 Dated: November 6, 2024

11   
12 Nancy J. Koppe  
13 United States Magistrate Judge

14 **NOTICE**

15 This report and recommendation is submitted to the United States District Judge assigned  
16 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and  
17 recommendation must file a written objection supported by points and authorities within fourteen  
18 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file  
19 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951  
20 F.2d 1153, 1157 (9th Cir. 1991).